

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

In Re: BISPHENOL-A (BPA))	MDL No. 1967
POLYCARBONATE PLASTIC PRODUCTS)	Master Case No. 08-01967-MD-W-ODS
LIABILITY LITIGATION)	
)	
This Filing Relates To All Actions)	
)	

PLAINTIFFS' NOTICE OF FILING OF AMENDED COMPLAINTS

Pursuant to this Court's Case Management Order dated November 25, 2008 (D.E. # 65), which called for each Plaintiff to "file an Amended Complaint against one or more Defendants," Plaintiffs today filed a total of seven separate pleadings which set forth the collective claims of Plaintiffs against Defendants, as follows: 1) Amended Class Action Complaints against Evenflo and Gerber, which amend complaints previously filed in this District; 2) new Class Action Complaints against Avent and Philips, Handi-Craft and Playtex, which, although filed as new complaints, effectively amend claims originally brought in this District; and 3) new Class Action Complaints against RC2 and Nalge Nunc, which likewise effectively amend claims previously brought in other Districts.^{1,2} Plaintiffs submit this Notice of Filing of Amended Complaints to explain the purpose underlying these filings to enable the Court to consider this approach, to hear any objections to it that the Court deems relevant, and to issue any orders regarding the effect of the Amended Complaints as it deems most fair and efficient, without awaiting the outcome of the expected motions to dismiss. This, in turn, will assist the parties in effectively litigating these actions.

¹ These Complaints are collectively referred to herein as the "Amended Complaints."

² As used herein, "Evenflo" refers to Defendant Evenflo Company, Inc.; "Gerber" refers to Defendant Gerber Products Co.; "Avent" refers to Defendant Avent America, Inc.; "Philips" refers to Defendant Philips Electronics North America Corporation; "Handi-Craft" refers to Defendant Handi-Craft Company; "Nalge Nunc" refers to Defendant Nalge Nunc International Corporation; and "RC2" refers to Defendant RC2 Corporation.

By filing the Amended Complaints, Plaintiffs seek to supersede all previously-filed complaints that have been transferred to this Court in connection with this multi-district litigation and consolidate these actions in this Court for all purposes, including trial.³ Plaintiffs' Amended Complaints against Evenflo and Gerber are amendments of pre-existing cases filed in this District, *Sullivan, et al. v. Avent America, et al.*, C.A. No. 4:08-309, and *Thornberry v. Avent America, et al.*, C.A. No. 4:08-418, respectively. Plaintiffs' Complaints against Avent and Philips, Handi-Craft and Playtex, although filed as new Complaints, are brought by Plaintiffs including the original Plaintiffs in the *Sullivan* and *Thornberry* actions and are intended to amend the claims originally brought in those actions. Plaintiffs' Complaints against Nalge Nunc and RC2 are new Complaints filed directly in this District for the first time today, and are intended to amend the claims originally brought by the Plaintiffs against Nalge Nunc and RC2 in the Southern District of California and Northern District of Illinois, respectively. The Complaints against Avent and Philips, Handi-Craft, Playtex, Nalge Nunc and RC2 are all filed with the designation that they are related to the *Sullivan* and *Thornberry* actions for the purpose of effecting their consolidation.

As each of these actions has been originally filed in the Western District of Missouri and alleges that venue is proper in this District, this Court has original jurisdiction over each of them. Vested with original jurisdiction, the Court may now exercise plenary authority over these actions, is not required to remand any part of the actions to the transferor courts, and is in position to oversee the actions through trial. *See In re Vioxx Products Liability Litigation*, 478 F.Supp.2d 897, 903 (E.D.La. 2007) (noting that it is "undisputed that the MDL court has

³ Plaintiffs filed multiple Amended Complaints rather than a single Amended Complaint to foreclose Defendants from raising arguments related to misjoinder, as they have indicated they would if a single complaint were filed. *See, e.g.*, Report Regarding The Parties' Planning Conference And Joint Proposed Discovery Plan (D.E. # 27), at 6, 12-13.

complete authority over every aspect” of cases properly filed directly into the judicial district where the MDL is situated). “[A]n amended complaint asserting venue in the transferee district” filed in the MDL court gives the transferee court the authority “to resolve the multidistrict litigation through trial while remaining faithful to the *Lexecon* limitations.” *See Manual for Complex Litig. Fourth* § 20.132 at 224-25 (citing *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 118 S.Ct. 956, 140 L.Ed.2d 62 (1998)) (holding that an MDL transferee court must remand a transferred case to the transferor court upon completion of “pre-trial proceedings”).⁴ This Court’s exercise of its original jurisdiction over these actions will serve the convenience of the parties, promote judicial efficiency and minimize the risk of inconsistent adjudications by facilitating the resolution of these actions in a single court.

Upon the Court acknowledging that the Amended Complaints will be treated as superseding the previously-filed complaints transferred to this District in connection with this multi-district litigation, Plaintiffs will voluntarily dismiss those complaints so that there will be no lingering questions as to their fate. Moreover, the Amended Complaints are not intended to waive or dismiss any claims or causes of action asserted by any plaintiffs in actions that may be transferred to this Court in the future under 28 U.S.C. § 1407 for pre-trial, multi-district litigation purposes only. Such claims, to the extent they are not included in, or superseded by, claims

⁴ The Manual also notes:

“[o]ften in multidistrict litigation the transferee court will consider establishing a master file with standard pleadings, motions, and orders. This file may include a single amended consolidated complaint, alleging that venue is proper in the transferee district. If such a document is used, the court and parties should take care to ensure a common understanding of the document’s intent and significance—that is, whether it is being used as a device simply to facilitate ease of the docket’s administration, or whether the filing in the transferee district constitutes the inception of a new “case or controversy” in that district, thereby superseding and rendering moot the pending separate actions that had been transferred to that district for pretrial proceedings by the Panel under section 1407.”

See Manual for Complex Litig. Fourth § 20.132 at 224, n.668. Here, each Amended Complaint filed by Plaintiffs is intended to serve as a single amended consolidated complaint, alleges that venue is proper in the Western District of Missouri, and seeks to supersede the prior actions that had been transferred to this District for pretrial proceedings by the Panel under section 1407. .

certified by this Court for class treatment and trial, may proceed in such further actions or proceedings that, on remand or otherwise, may be necessary or appropriate. As such, no party not currently before the Court will be prejudiced by treating the Amended Complaints as suggested by Plaintiffs.

Should the Court have any questions regarding the effect of the Amended Complaints, Plaintiffs will be happy to address them in whatever manner the Court deems appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send a notice of electronic filing to all persons registered for ECF as of that date.

/s/ Thomas V. Bender